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OFFICE OF PETITIONS

In re Application of Mysker :
Application No. 10/695,115 : Decision on Petition
Filing Date: October 28, 2003 :
Attorney Docket No. 1776/40924/PA7 :

This is a decision on the petition filed October 4, 2006, which is being treated as a petition under 37 CFR 1.181 to establish an appeal brief was timely filed April 26, 2006, and the application is not abandoned.

The petition is **granted**.

Office records indicate a complete and proper appeal brief was not filed within the one (1) month of the Notification of Non-Compliance with 37 CFR 1.192(c) mailed March 27, 2006, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained.

Unless petitioner demonstrates an appeal brief was in fact timely filed, the appeal will be considered dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(d) & 1.197(c). As no claim has been allowed, the-above-identified application will be considered abandoned. See MPEP 1215.04.

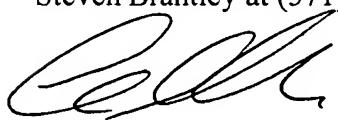
Petitioner contends an appeal brief was timely filed on April 26, 2006. In support of the petition, petitioner has submitted a date-stamped postcard receipt, indicating an amended appeal brief was received on April 26, 2006. A copy of the April 26, 2006 brief accompanies the petition.

The original brief filed April 26, 2006, was not matched with the file and cannot be located. However, M.P.E.P. 503 states, “[a] postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.” Accordingly, it is concluded that an appeal brief was timely filed in the Patent and Trademark Office but not matched with the application file.

Petitioner has established the an appeal brief was timely filed April 26, 2006.

Technology Center Art Unit 3643 will be informed of the instant decision and the examiner will review the appeal brief in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
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